IN THE HIGH COURT OF MADHYA PRADESH AT JABALPUR

M.P.No. 323 /93

Division Bench (Civil)

Petitioner : Ku.Maya Vishnoi Daughter of Shri Karam Chand Vishnoi, aged about 26 years Resident of Baloda Bazar, Raipur (M.P.)

- Versus -

Respondents : 1. The State of M.P. through Secretary Department of Panchayat and Social Welfare, Vallabh Bhawan, Bhopal.

2. Director, Department of Panchayat and Social Welfare, Old Secretariate, Bhopal.

3. Deputy Director, Department of Panchayat and Social Welfare, Raipur.

4. Collector, Raipur.

5. The Chief Executive Officer, Janpad Panchayat Kasdol, Distt.Raipur.

PETITION Under Art.226/227 of the Constitution of Indi

(69)

**HIGH COURT OF CHHATTISGARH AT BILASPUR**

**SINGLE BENCH : HON'BLE MR. SATISH K. AGNIHOTRI, J.**

**WRIT PETITION NO.323 OF 1993**

| | | |
|---|---|---|
| Petitioner | : | Ku. Maya Vishnoi |
| | versus | |
| Respondents | : | The State of M.P. (Now Chhattisgarh) and others |

Present : Mr. Anil Gulati, counsel for the petitioner.
Mr. Arun Sao, Government Advocate for respondents No.1 to 4.
None appears for respondent No.5.

**ORDER**
(Passed on 21st of November, 2006)

The petitioner was appointed as Lower Division Clerk on temporary basis for a period of 89 days from 1-12-1988 to 31-5-1989 by order dated 29-11-1988 (Annexure P-1). Before expiry of the period of appointment of the petitioner, it was extended upto 30-11-1989 by order dated 28-4-1989 (Annexure P-3). Thereafter, by order dated 30-11-1989 (Annexure P-4), the petitioner was removed from the service. The petitioner made a representation against her removal from the service on 14-6-1989 (Annexure P-5). On her representation, she was again appointed on daily wages from a period from 7-12-1989 to 4-2-1990 by order dated 6-12-1989 (Annexure P-6). Thereafter, vide order dated 1-2-1990 (Annexure P-7), it was ordered that the services of the petitioner would be dispensed with from the afternoon of 4-2-1990. When the

matter was represented to the Director, Panchayat and Social Welfare Department, the petitioner was again appointed on daily wages for a period of 89 days upto 1-11-1992 by order dated 4-8-1992. Thereafter, vide order dated 31-10-1992 (Annexure P-12), the petitioner was again removed from the service. In the present case, the petitioner seeks quashing of the impugned removal order dated 31-10-1992 (Annexure P-12) and a writ/direction to the respondents to regularise services of the petitioner with effect from 1-12-1988.

2. It is admitted case of the petitioner that the appointment of the petitioner was not in accordance with the constitutional scheme of employment or under any rules framed under proviso to Article 309 of the Constitution of India inviting applications from all the eligible candidates.

3. The Supreme Court, while dealing with the matters of daily wagers, *ad hoc* employees, probationers, temporary or contractual employees, not appointed following the procedure laid down under Articles 14, 16 and 309 of the Constitution of India, held that such appointments dehors the constitutional scheme amounts to back door entry in the matter of public employment and the employees have no right to the post.

4. The Constitutional Bench of the Supreme Court in *Secretary, State of Karnataka and others vs. Umadevi (3) and others*[1] has laid down clear enunciation of law which was followed later on in various decisions by the Supreme Court. Some are *Accounts Officer (A&I) A.P.SRTC and others vs. P. Chandra Sekhara Rao and others*[2],

(81)

*Surinder Prasad Tiwari vs. U.P. Rajya Krishi Utpadan Mandi Parishad and others*[3], *Nagar Mahapalika (now Municipal Corpn.) vs. State of U.P. and others*[4] and *U.P. State Road Transport Corporation vs. Man Singh*[5].

5. In the case of *Secretary, State of Karnataka and others vs. Umadevi (3) and others* (Supra), the Supreme Court observed as under :-

> "45. While directing that appointments, temporary or casual, be regularised or made permanent, the courts are swayed by the fact that the person concerned has worked for some time and in some cases for a considerable length of time. It is not as if the person who accepts an engagement either temporary or casual in nature, is not aware of the nature of his employment. He accepts the employment with open eyes. It may be true that he is not in a position to bargain – not at arm's length – since he might have been searching for some employment so as to eke out his livelihood and accepts whatever he gets. But on that ground alone, it would not be appropriate to jettison the constitutional scheme of appointment and to take the view that a person who has temporarily or casually got employed should be directed to be continued permanently. By doing so, it will be creating another mode of public appointment which is not permissible."
>
> "47. When a person enters a temporary employment or gets engagement as a contractual or casual worker and the engagement is not based on a proper selection as recognised by the relevant rules or procedure, he is aware of the consequences of the appointment being temporary, casual or contractual in nature. Such a person cannot invoke the theory of legitimate expectation for being

confirmed in the post when an appointment to the post could be made only by following a proper procedure for selection and in cases concerned, in consultation with the Public Service Commission."

6. For the reasons above-stated and as per the dicta laid down by the Supreme Court, the petitioner is not entitled to absorption/permanent status or regularisation in the service.

7. This petition is accordingly dismissed. No order as to costs.

Sd/-
SATISH K. AGNIHOTRI
Judge

---

1 (2006) 4 SCC 1
2 (2006) 7 SCC 488
3 (2006) 7 SCC 684
4 2006 AIR SCW 2497
5 2006 AIR SCW 5159

Gopal